



**ISSUES**

This is an application for review filed by the claimant requesting the Appeals Board to review Administrative Law Judge George R. Robertson's Preliminary Hearing Order of June 6, 1994, raising the following issues:

- (1) The Administrative Law Judge erred in finding that the claimant suffered an intervening accidental injury.
- (2) The Administrative Law Judge exceeded his jurisdiction by not awarding the attorney's fees requested by the claimant's attorney pursuant to K.S.A. 44-536(g).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the entire record and for purposes of preliminary hearing, the Appeals Board finds as follows:

(1) This matter came before the Administrative Law Judge on a Form E-3 Application for Preliminary Hearing requesting medical treatment filed by the claimant. This is a post-award request from the Award entered by Administrative Law Judge George R. Robertson on December 16, 1992, and subsequently affirmed by the Director on April 29, 1993. Contained in the Award was the finding that future medical was to be provided upon application only.

The Administrative Law Judge, in his Preliminary Hearing Order dated June 6, 1994, denied the claimant's request for medical treatment. He found that the claimant's increased symptoms were the result of intervening causes, specifically from driving a bus outside of his work restrictions and pulling weeds in his garden.

K.S.A. 44-534a(a)(1) gives an Administrative Law Judge the authority to decide issues concerning the furnishing of medical treatment. However, the Appeals Board has jurisdiction to review this preliminary order of the Administrative Law Judge as it raises one of the jurisdictional issues enumerated in K.S.A. 44-534a(a)(2). The Administrative Law Judge found in this case that the claimant suffered an intervening accidental injury. In so doing, he raised the issue of whether the claimant suffered an accidental injury arising out of and in the course of his employment with this respondent which gives the Appeals Board jurisdiction to review a Preliminary Hearing Order. See K.S.A. 44-534a(a)(2).

In the case at hand, the only medical evidence introduced by the claimant during the preliminary hearing of this matter was a note from Howard L. Wilcox, M.D., dated May 23, 1994. The claimant, through his own testimony, established that he did not see the doctor on May 23, 1994, but the note was obtained as a result of a telephone conversation with Dr. Wilcox's nurse. The note simply takes the claimant off work from driving a school bus because of recurrent severe L-5 sprain.

Claimant testified that he had increased pain in his back when he was pulling weeds in his garden. He also testified that he had increased symptoms in his back while he was driving the school bus for the school district.

The Appeals Board finds from the credible evidence in the record of this case that it is more probably true than not true that an intervening cause resulted in the increased symptoms of the claimant and that they are not the natural consequences of his previous injury. Accordingly, the claimant's increased symptoms did not arise out of claimant's employment with this respondent.

The Administrative Law Judge also denied the claimant's request for attorney's fees pursuant to K.S.A. 44-536(g). The Appeals Board finds that in review of this statute that it is clear and unambiguous and requires the employer, or in this case the Kansas Workers Compensation Fund, to pay reasonable and customary fees to the employee's attorney, even if no additional compensation is awarded. Accordingly, this case is remanded to the Administrative Law Judge on this sole issue and to hold a hearing to determine reasonable and customary attorney's fees to be awarded to the claimant's attorney in reference to this request for medical treatment.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge George R. Robertson's Preliminary Hearing Order, dated June 6, 1994, denying claimant's request for medical benefits is affirmed and remains in full force and effect. The Administrative Law Judge's Order denying attorney's fees to the claimant's attorney is remanded for further proceedings in accordance with the finding above.

### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 1994.

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BOARD MEMBER

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c: Kent Roth, PO Drawer 338, Great Bend, KS 67530  
Jerry Ward, PO Drawer 2005, Great Bend, KS 67530  
Richard L. Friedeman, PO Box 1110, Great Bend, KS 67530  
George R. Robertson, Administrative Law Judge  
George Gomez, Director